though not the universal rule makes the standard not external, that of the average man, but internal, that of the defendant himself.[4] He must have "known better," or he is not deserving of punishment. That a railroad director was so ignorant that he did not appreciate the danger of existing conditions would, however, be insufficient to excuse him, since he would doubtless know that public safety demands careful and competent supervision of railroads, and that this supervision is part of the duty of the director. If, knowing this, he undertakes the responsibility of oversight while consciously unable to intelligently oversee, he cannot excuse himself on the ground of ignorance of the dangerous conditions. His position is analogous to that of a person who knowing his own incompetence undertakes to run a locomotive or to practise medicine.[5] The public welfare demands that those upon whom the people are so largely dependent be held to the highest legal responsibility.

THE IMMUNITY OF GOVERNMENT PROPERTY FROM ARREST. — Since the exhaustive and well-considered opinion in the case of Briggs *v.* The Light-Boats,[1] it has been well-established law that, speaking generally, no lien can be enforced against government property when the enforcement involves a disturbance of the government's possession. It may not be erroneous to say the lien exists; but where an attempt is made to enforce it, the courts meet a grave jurisdictional difficulty. To take property of the government out of its possession is a derogation of its sovereign rights. The few cases which have allowed the lien to be enforced seem to have overlooked this distinction between the existence of the lien and the enforcement of it.[2] When, however, the property sought to be arrested is not in the possession of the government, a different question arises on which the law is not so clear.

The Judicial Committee of the Privy Council has recently taken occasion to express an opinion on both these points. A ferry boat, the property of the Crown destined for service in the operation of a government railway, being disabled on the high seas, was towed into port. Their Lordships held she could not be libeled for salvage. And although they regarded the vessel as in the possession of the servants of the Crown, they expressly stated that their decision would not be affected if it were to be shown that she was in the hands of private persons. *Young* v. *Steamship Scotia*, 89 L. T. 374. It is submitted that this latter opinion is inconsistent both with authority and with principle. The property of the United States in the hands of a carrier has been subjected to a lien for freight,[3] likewise to a lien for salvage.[4] And in a much quoted opinion Mr. Justice Story held such property of the government liable to contribution for a general average loss.[5] It is probable, moreover, that such has always been the law in England.[6] There is one

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[4] R. *v.* Wagstaffe, 10 Cox C. C. 530. *Contra*, Commonwealth *v.* Pierce, 138 Mass. 165.

[5] R. *v.* Markuss, 4 Fost. & F. 356.

[1] 11 Allen (Mass.) 157.

[2] The Revenue Cutter No. 1, 21 Law Reporter, 281 (U. S. D. C.).

[3] Union Pacific Railroad Co. *v.* U. S., 2 Wyo. 170.

[4] The Schooner Merchant, 17 Fed. Cas. 35 (U. S. D. C.); The Davis, 10 Wall. (U. S.) 15.

[5] U. S. *v.* Wilder, 3 Sumn. (U. S. C. C.) 308.

[6] See 1 Parsons, Mar. Law 324.

case apparently *contra* to this general holding, where an inn-keeper was indicted for obstructing the passage of the mails by detaining the coach horses. He pleaded his innkeeper's lien, and it was held insufficient.[7] In this case, however, the indictment was under a statute which forbade absolutely any obstruction to the passage of the mails. The decision, therefore, seems not to modify the weight of authority. On principle, moreover, there seems no valid objection to the enforcement of the lien. It is one thing to say the courts may not take property out of the possession of the government; it is another and quite different thing to say that when the government submits to the processes of the courts in order to regain its property, the ordinary legal obligations with regard to that property must not be satisfied. In this latter case it is reasonable to say that the government by its appearance as a suitor waives its exemption and submits to the application of the same principles by which justice is administered between private suitors.[8]

SIMILAR OCCURRENCES AS EVIDENCE. — It is often important to determine the quality of a certain object or act, such as the value of land, the dangerous character of a drug, or the reasonableness of an act. To prove this, it is customary to bring forward other occurrences under more or less similar circumstances which throw light upon this quality. Speaking generally, such evidence is admissible unless in the opinion of the judge its probative value is outweighed by a resulting multiplicity of issue or undue surprise.[1] As a result of the vagueness of this rule, the decisions are chaotic and arbitrary. It would seem, however, that in certain cases distinctions might be drawn which would tend to simplify the question.

In considering whether evidence should be excluded on the ground of surprise, a distinction may be noted between the effects and operations, under similar circumstances, of the same object or act, and of a similar object or act. For example, to prove that a certain grading where the plaintiff had fallen was dangerous, evidence of other falls from the same grading, or from a similar grading in another city, might be offered. In the first case there should be no exclusion on the ground of surprise, since the nature of one particular thing only is brought in question, and both parties must have known that its own effects would probably be produced as evidence.[2] When, however, the operations or effects of other similar acts or objects are offered, the judge should be free to exclude them unless for some reason their introduction ought to have been anticipated.[3]

Unless the similar occurrences offered in evidence are numerous, they should not be excluded on the ground of multiplicity, for they can cause no great danger either of confusing the issue or unduly protracting the trial. And whenever the number of instances becomes so great that the judge might exclude them for that reason, that very fact would seem to make an opinion necessary and admissible through which these same instances might

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[7] U. S. *v.* Barney, 3 Hall's Am. L. Jour. 128 (U. S. D. C.).
[8] See The Siren, 7 Wall. (U. S.) 152, 159.

[1] Greenl. Ev., 16th ed., § 14 v.
[2] Hunt *v.* Lowell Gas Co., 8 Allen (Mass.) 169; Darling *v.* Westmoreland, 52 N. H. 401; District of Columbia *v.* Armes, 107 U. S. 519.
[3] Paine *v.* Boston, 4 Allen (Mass.) 168; Grand Trunk R. R. Co. *v.* Richardson, 91 U. S. 454.